

### C) REMARKS

The Office Action of November 2, 2006 subjects Figures 1-14 currently pending in the present Application to a restriction requirement. The Examiner has required restriction to one of the following species under 35 U.S.C. § 121:

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|------------|--------------------|
| Species 1. | Figure 2.          |
| Species 2. | Figure 3.          |
| Species 3. | Figure 4.          |
| Species 4. | Figure 6.          |
| Species 5. | Figure 7.          |
| Species 6. | Figures 16 and 17. |
| Species 7. | Figures 18 and 19. |
| Species 8. | Figures 23 and 24. |

To begin, Applicant submits that the attempted restriction requirement of the Examiner is improper and should be withdrawn. 35 U.S.C. § 121 states "[i]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions." Thus, a restriction can only be given when there are two or more independent and distinct inventions in the claims. This requirement for two or more inventions to be recited in the claims is repeated in 37 CFR §§ 1.141 and 1.142 and in Chapter 800 of the MPEP. Furthermore, Applicant cannot identify any authority that permits an Examiner to restrict an application based on what is illustrated in the drawings of the application. The Examiner is requested to cite the appropriate authority providing for a restriction requirement based on the drawings of the application. Therefore, since the Examiner has failed to identify the presence of two or more inventions in the claims and has no authority to base a restriction requirement on the drawings, Applicant submits that the Examiner's restriction requirement is improper and should be withdrawn.

However, in the interest in expediting prosecution of the Application and in accordance with the requirements of 37 CFR § 1.143 Applicant elects, with traverse and without prejudice, Species 7, i.e., claims 1-15.

Next, the restriction is made pursuant to 35 USC § 121. It is the Examiner's position that "[t]he above-referenced species are independent or distinct because they can have a materially

different design". In response, Applicant notes that the claims must be shown to be "independent and distinct" to maintain the restriction, 35 USC § 121, 37 CFR § 1.141, MPEP 802. Since this requirement is statutory, it is not proper to interpret the statute in any other fashion. 35 USC § 121 provides no basis for restriction on the ground that the Figures contain different embodiments.

Applicant requests a prompt and favorable action by the Examiner. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,  
**McNEES, WALLACE & NURICK LLC**

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By

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